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# **The Sikkim Co-operative Societies**

**Act,**

**1978**

1978

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GANGTOK

Sikkim Act No. 12 of 1978  
The Sikkim Co-operative Societies Act, 1978

An  
Act

to consolidate and amend the law relating to co-operative societies in the State of Sikkim.

WHEREAS it is expedient to further facilitate the formation and working of co-operative societies for the promotion of thrift, self-help and mutual aid among persons with common economic needs and to bring about improvement in agriculture and industry through better methods of production, better business and better living and for that purpose to amend and consolidate the law relating to co-operative societies in the State of Sikkim.

Be it enacted by the State legislature in the....28.....year of the Republic of India as follows :

Chapter I  
Preliminary

*Short-title extent and  
commencement*

1. (i) This Act may be called the Sikkim Co-operative societies Act, 1978.

(ii) It extend to the whole of the State of Sikkim.

(iii) It shall come into force on such date as the Government may, by notification in the official Gazette appoint.

In this act, unless the context otherwise requires.

*Definitions*

*10 of 1963*

2. (a) 'Agricultural Refinance and Development Corporation' means the Agricultural Refinance and Development Corporation constituted under the Agricultural Refinance and Development Corporation Act, 1963.

(b) 'Bank' includes

*10 of 1949*

(i) A banking company as defined in Section 5 of the Banking Regulation Act, 1949.

*23 of 1955*

(ii) State Bank of India constituted under the State Bank of India Act, 1955.

*5 of 1970*

(iii) A 'corresponding new bank' constituted under section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970.

*10 of 1949*

(iv) Any other banking institution notified by the Central Government under Section 51 of the Banking Regulation Act, 1949.

(c) 'Bye-laws' means the registered bye-laws for the time being in force, and includes registered amendments of such bye-laws.

(d) 'Committee' means the governing body of a society, by whatever name called, to which the management of the affairs of the society is entrusted.

(e) 'Co-operative year' means the period beginning from 1st July or the date of commencement of business or the date of registration and ending the 30th June for the purpose of drawing up the balance sheets of registered societies.

*47 of 1961*

(f) 'Deposit Insurance Corporation' means the Deposit Insurance Corporation established under section 3 of the Deposit Insurance Corporation Act, 1961.

(g) 'Federal society' means a society other than state co-operative bank, (a) not less than five members of which are themselves societies; and (b) in which the voting rights are so regulated that the members which are societies have not less than three fourths of the total number of votes in the general meeting of such society.

*18 of 1964*

(h) 'Government' means the State Government of Sikkim.

(i) 'Industrial Development Bank' means the Industrial Development Bank of India constituted under the Industrial Development Bank of India Act, 1964.

(j) 'Member' means a person joining in the application for registration of a society and a person admitted to membership after such registration in accordance with this Act, the rules and the bye-laws, and shall include a nominal member and the Government when it subscribes to the share capital of a society.

(k) 'Nominal member' means a person admitted to membership as such after registration in accordance with the bye-laws.

16 of 1962

(l) 'National Co-operative Development Corporation' means the National Co-operative Development Corporation constituted under the National Co-operative Development Corporation Act, 1962.

(m) 'Officer' means the president, vice-president, chairman, vice-chairman, managing director, secretary, manager, member of committee, treasurer, liquidator, administrator and includes any other person empowered under the rules or the bye-laws to give directions in regard to the business of society.

(n) 'Prescribed' means prescribed in the rules.

2 of 1934

(o) 'Primary agricultural credit society' shall have the meaning assigned to it in clause (cii) of Section 2 of the Reserve Bank of India Act, 1934 and includes a Farmers Service Society or Large-sized Multipurpose Society.

(p) 'Registrar' means a person appointed to perform the functions of the Registrar of Co-operative Societies under this Act and includes any person appointed to assist the Registrar in exercise of all or any of his powers under this Act.

2 of 1934

(q) 'Reserve Bank' means the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934.

(r) 'Rules' means the rules made under this Act.

(s) 'Society' means a co-operative society registered or deemed to be registered under this Act:

(t) 'Society with limited liability' means a society the liability of whose members is limited by its bye-laws to the amount, if any, unpaid on the shares individually held by them or to such amount as they may individually undertake to contribute to the assets of the society, in the event of its being wound up.

(u) 'Society with unlimited liability' means society the joint or several liability of whose members to meet any deficiency in the assets of the society in the event of its being wound up is unlimited.

(v) 'State Co-operative Bank' means the 'Sikkim State Co-operative Bank Ltd.' registered as a society under this Act.

## Chapter II

### Registration of Societies

Registrar

3. (1) The Government may appoint a person to be the Registrar of Co-operative Societies for the State of Sikkim and may appoint other persons to assist him.

(2) The Government may, by general or special order, confer on any person appointed to assist the Registrar all or any of the powers of the Registrar under this Act.

(3) Every person appointed to assist the Registrar shall exercise the powers conferred on him under sub-section (2) subject to the general guidance, superintendence and control of the Registrar.

(4) The Government may, by notification in the Official Gazette and subject to such conditions as it may think fit to impose, confer all or any of the powers of the Registrar under this Act on the State Co-operative Bank or any federal society or an officer of such bank or federal society and every such bank or federal society or officer on whom the powers of the Registrar are so conferred shall exercise such powers under the general guidance, superintendence and control of the Registrar.

Societies which may be registered

4. (1) Subject to the provisions hereinafter contained, a society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society and the State Co-operative Bank may be registered under this act. Provided that the Registrar shall not register any society with unlimited liability.

Conditions of registration

5. (a) No society, other than a federal society, shall be registered under this Act unless it consists of at least ten persons not belonging to the same family who are qualified to be members under this Act and who reside in the area of operation of the society.

Explanation - For the purposes of this Act 'Family' means the husband, wife, sons and unmarried daughters.

(b) The word "limited" shall be the last word in the name of every society with limited liability registered under this Act.

*Application for registration*

6. (1) For the purposes of registration, an application shall be made to the Registrar.

(2) The application shall be signed - (a) in the case of a society of which no member is a society, by at least ten persons qualified in accordance with the requirements of section 5; and (b) in the case of a society of which a member is a co-operative society, by a duly authorised person on behalf of such society and where all the members of the society are not societies, by ten other members or when there are less than ten other members qualified to do so under section 5 by all of them.

*Power of the Registrar to decide certain questions*

7. Where any question arises whether, for the purpose of this Act, a person resides in the area of operation of a society or not, or whether a society is of the same type as another society or of different type, the question shall be decided by the Registrar whose decision shall be final.

*Registration*

8. (1) If the Registrar is satisfied - (a) that the application complies with the provisions of this Act and the rules; (b) that the objects of the proposed society are in accordance with section 4; (c) that the proposed bye-laws are not contrary to the provisions of this Act and the rules; and (d) that the proposed society has reasonable chances of success, and that the registration thereof may not have any adverse effect on the development of co-operative movement, the Registrar may register the society and its bye-laws.

(2) When the Registrar refuses to register a society, he shall communicate within a period of six months from the date of receipt of application the order of refusal, together with the reasons therefor, to the applicant as may be prescribed.

*Registration Certificate*

9. Where a society is registered, the Registrar shall issue a certificate of registration signed by him, which shall be conclusive evidence that the society therein mentioned is duly registered under this Act.

*Registered Societies to be bodies corporate*

10. The registration of a society shall render it a body corporate by the name under which it is registered, having perpetual succession and a common seal, and with power to acquire, hold and dispose of property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purpose for which it is constituted.

*Amendment of bye-laws of a Society*

11. (1) No amendment of any bye-laws of a society shall be valid unless it is registered under this Act.

(2) Every proposal for such amendment shall be forwarded to the Registrar and if the Registrar is satisfied that the amendment -

- (a) is not contrary to the provisions of this Act and the rules;
- (b) does not conflict with Co-operative principles; and
- (c) will promote the economic interests of the members of the

society,

he may register the amendment.

(3) The Registrar shall forward to the society a copy of the registered amendment together with a certificate signed by him and such certificate shall be conclusive evidence that the amendment has been duly registered.

(4) Where the Registrar refuses to register an amendment of the bye-laws of a society, he shall communicate the order of refusal together with the reasons therefor, to the society in the manner prescribed.

*Registrar's power to direct amendment of bye-laws*

12. Notwithstanding anything contained in section 11, if in the opinion of the Registrar, an amendment of the bye-laws of a society is necessary or desirable in the interest of such society or of the co-operative movement, he may, in such manner as may be prescribed, call upon the society to make any amendment within such time as he may specify. If the society fails to make such an amendment within the time so specified the Registrar may, after giving the society an opportunity of making its representation, register such amendment and forward to the society by registered post a copy of the amendment together with a certificate signed by him, such a certificate shall be conclusive evidence that the amendment has been duly registered; and such an amendment shall have the same effect as an amendment of any bye-laws duly made by the society.

*When amendments of bye-laws come into force*

13. An amendment of the bye-laws of a society shall, unless it is expressed to come into operation on a particular day, come into force on the day on which it is registered.

*Change of name*

14. (1) A society may, by an amendment of its bye-laws, in such manner as may be prescribed, change its name; but such change shall not affect any right or obligation of the society or of any of its members, past members or deceased members and any legal proceedings pending may be continued by or against the society under its new name.

(2) Where a society changes its name, the Registrar shall enter the new name on the register of societies in place of the former name and shall amend the certificate of registration accordingly.



*Change of Liability*

15. (1) No society with limited liability shall change itself into a Society with unlimited liability.

(2) Subject to the provision of sub-section (1), a society may change the form and extent of its liability by an amendment of its bye-laws in the manner prescribed.

(3) When a society has amended its bye-laws under sub-section (2), it shall give notice thereof in writing to all its members and creditors and notwithstanding any bye-law or contract to the contrary any member or creditor shall, within a period of 30 days from the date of service of the notice upon him, have the option to withdraw his shares or deposits or recall the loans, as the case may be.

(4) Any member or creditor who does not exercise his option within the period specified in sub-section (2) shall be deemed to have assented to the change.

(5) An amendment of the bye-laws of a society changing the form or extend of its liability shall not be registered or take effect until either -

(a) the assent thereto of all members and creditors has been obtained or is deemed to have been obtained; or

(b) all claims of members and creditors who exercise the option referred to in sub-section (2) within the period specified therein have been met in full.

*Amalgamation, transfer of assets and liabilities and division of societies*

16. (1) A society may, with the previous approval of the Registrar and by a resolution passed by at least a two thirds majority of the members present and voting at a general meeting of the society -

(a) transfer its assets and liabilities in whole or in part to any other society;

(b) divide itself into two or more societies.

(2) Any two or more societies may, with the previous approval of the Registrar and by a resolution passed by at least a two-thirds majority of the members present and voting at a general meeting of each society, amalgamate themselves and form a new society.

(3) The resolution of a society under sub-section (1) or sub-section (2) shall contain all particulars of the transfer, division or amalgamation, as the case may be.

(4) When a society has passed any such resolution, it shall give notice thereof in writing to all its members and creditors and, notwithstanding any bye-laws or contract to the contrary, any member or creditor shall, within a period of thirty days from the date of service of the notice upon him, exercise the option to withdraw his shares or deposits or recall the loans, as the case may be.

(5) Any member or creditor who does not exercise his option within the period specified in sub-section (4) shall be deemed to have assented to the proposals contained in the resolution.

(6) A resolution passed by a society under this section shall not take effect until -

(a) the assent thereto of all the members and creditors has been obtained or is deemed to have been obtained; or

(b) all claims of the members and creditors who have exercised the option referred to in sub-section (4) within the period specified therein have been met in full.

(7) Where a resolution passed by a society under this section involves the transfer of any assets and liabilities, the resolution shall, notwithstanding anything contained in any law for the time being in force, be a sufficient conveyance to vest the assets and liabilities in the transferee without any further assurance.

*Power to direct amalgamation and reorganisation*

17. (1) Notwithstanding anything contained in this Act, if the Registrar is of the opinion that -

(a) for the purpose of ensuring economic viability of any society or societies; or

(b) for avoiding overlapping or conflict of jurisdictions of societies in any area; or

(c) in order to secure proper management of any society; or

(d) in the public interest; or

(e) in the interest of the co-operative movement in the State as a whole; or

(f) in the interest of depositors; or

(g) in the interest of the co-operative credit structure in the State as a whole, it is necessary to amalgamate two or more societies or to reorganise

any society, he may by order published in the Official Gazette provide for amalgamation of two or more such societies into a single society with limited liability or to reorganise the society.

(2) Such order may also provide for -

(a) reduction of the interests or the rights which the members, depositors, creditors, employees and other persons may have in or against any society so to be amalgamated or reorganised, to such extent as the Registrar may consider necessary in the interest of such persons or for the maintenance of the business of that society having due regard to the proportion of the assets of such society to its liabilities.

(b) such incidental, consequential and supplemental provisions as may in the opinion of the Registrar be necessary to give effect to the amalgamation of the societies.

(3) No order shall be made under sub-section (1) unless -

(a) a copy of the proposed order has been sent in draft to each of the societies concerned; and

(b) the Registrar has considered and made such modifications in the draft order as may seem to him desirable in the light of any suggestions or objections which may be received by him within such period (not being less than fifteen days from the date on which the copy of the proposed order was received by the societies) as the Registrar may fix in that behalf, either from the societies or any members, depositors, creditors, employees or other persons concerned.

(4) Notwithstanding anything contained in this Act or in any other law, or in any contract, award or other instrument for the time being in force, on the issue of an order under sub-section (1), the provisions thereof shall be binding on all societies and their members, past members, depositors, creditors, employees and all other persons having dealings with the concerned societies.

(5) On and from the date from which the amalgamation takes effect, the assets and liabilities of the societies referred to therein shall stand amalgamated or merged with the assets and liabilities of the societies formed out of such amalgamation and the members, creditors and debtors of such societies, shall be deemed to be members, creditors and debtors, as the case may be, of the new society or societies as ordered by the Registrar.

(6) Notwithstanding anything contained in any law for the time being in force relating to transfer of properties or registration of documents, an order issued under this section shall be sufficient conveyance to transfer the assets and liabilities of the society or societies covered by any order passed under sub-section (1) of this section.

(7) Any order made by the Registrar under this section shall be final and conclusive, and shall not be called in question in any Court.

*Liability of resultant  
society to be limited*

18. Where the whole of the assets and liabilities of a society are transferred to another society in accordance with the provisions of section 16 or where a society is directed to be amalgamated under section 17, the liability of the other society, or the new society, as the case may be, shall be limited.

*Cancellation of registra-  
tion certificates of socie-  
ties in certain cases*

19. (1) Where the whole of the assets and liabilities of a society are transferred to another society in accordance with the provisions of section 16 or section 17, the registration of the society whose assets and liabilities are so transferred, shall stand cancelled and the said society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(2) Where two or more societies are amalgamated into a new society in accordance with the provisions of section 16 or section 17, the registration of each of the amalgamating societies shall stand cancelled on the registration of the new society, and each society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(3) Where a society divides itself into two or more societies in accordance with the provisions of section 16, the registration of that society shall stand cancelled on the registration of the new societies and that society shall be deemed to have been dissolved and shall cease to exist as a corporate body.

(4) The amalgamation, division or reorganisation of societies shall not in any manner whatsoever affect any right or obligation of the amalgamated, divided or reorganised society or societies or render defective any legal proceedings by or against such society or societies and any legal proceeding that might have been commenced or continued by or against such society or societies, as the case may be, before the amalgamation, division or reorganisation, may be continued by or against the resulting or the reorganised society or societies.

(5) Where a society has not commenced business within six months of its registration or such further time as may be granted by the Registrar after its registration or has ceased to function or if the Registrar is satisfied, after making

such inquiry as he thinks fit, that the society no longer has genuinely as its objects one or more of the objects specified in section 4 and that its registration ought in the interests of the general public to be cancelled, he shall make an order cancelling the registration of the society. The society shall from the date of such order of cancellation be deemed to be dissolved and shall cease to exist as a corporate body.

### Chapter III

#### Members of societies and their rights and liabilities

*Persons who may become members*

9 of 1872

20. (1) No person shall be admitted as a member of a society except the following, namely;

(a) an individual competent to contract under section 11 of the the Indian Contract Act, 1872;

(b) any other society;

(c) the Government;

(d) a firm, a company or any other body corporate constituted under any law for the time being in force or a society registered under any law in force relating to Registration of Societies or a bank as defined in the Act subject to such terms and conditions as may be laid down by the Government by general or special order in this behalf.

(2) Any person who is duly qualified for admission as a member under the provisions of this Act and the bye-laws of a primary agricultural credit society, makes an application for membership of such society, shall be deemed to have been admitted as a member of such society from the date of receipt of the application in the office of the society.

Provided that the Registrar may, either on his own motion at any time or on an application by the primary agricultural credit society or any member thereof made within fifteen days from the date of such admission and after giving reasonable opportunity to the society and the member concerned, by order declare such person as not eligible either to become or to continue as a member of such society for the reasons mentioned therein. Where the order is to be passed on an application of the society or a member thereof it shall be passed within thirty days from the date of receipt of the application by the Registrar.

(3) Any order made by the Registrar under sub-section (2) of this section shall be final and shall not be called in question in any Court.

(4) An application for membership in a society, other than a primary agricultural credit society shall be disposed of by the Society within one month from the date of receipt thereof, and the decision of the Society on the application shall be communicated to the applicant within fifteen days from the date of the decision:

Provided that if the decision of the society is not communicated to the applicant within a period of forty five days from the date of the receipt of the application by the Society, the Society shall be deemed to have decided, on the date of expiry of such period, refusing admission to the applicant.

*Disqualification for membership*

21. (1) No person shall be eligible for admission as a member of a society, if he -

(a) has applied to be adjudicated an insolvent or is an undischarged insolvent; or

(b) has been sentenced for any offence, other than an offence of a political character or an offence not involving moral turpitude, such sentence not having been reversed or the offence pardoned and a period of five years has not elapsed from the date of expiry of the sentence.

(2) If a member becomes subject to any of the disqualifications specified in sub-section (1), he shall be deemed to have ceased to be a member from the date when the disqualification was incurred.

(3) Subject to the general or special orders of the Registrar published in the official Gazette, no individual who is a member of a credit society, shall be eligible for admission as a member of another credit society.

*Votes of members*

22. Every member of a society shall have one vote in the affairs of the society; provided that -

(a) a nominal member shall not have the right to vote;

(b) a member of a primary agricultural credit society shall have no right to vote in a general meeting if he is in default in payment of any sums due to that society for more than one year; and

(c) where the Government is the member of the society, each person nominated by the Government on the Committee of the society shall have one vote except when the right to vote is to be exercised for election of office bearers of the society.

- Manner of exercising vote* 23. (1) Every member of a society shall exercise his vote in person at a meeting of the society and no member shall be permitted to vote by proxy.  
(2) Notwithstanding anything contained in sub-section (1), a society or corporation or firm which is a member of another society may, subject to any rules made under this Act, appoint one of its members or partners, as the case may be, to vote on its behalf in the affairs of that society.
- Nominal members* 24. (1) A society may admit any individual or other person or firm as a nominal member in accordance with its bye-laws.  
(2) A nominal member shall not be entitled to any share, in any form whatsoever, in the assets or profits of the society or to become an officer of the society.  
(3) A nominal member shall have such privileges and rights of a member and be subject to such liabilities of a member, as may be specified in the bye-laws of the society.
- Member not to exercise rights till due payment made* 25. No member of a society shall exercise the rights of a member unless he has made such payments to the society in respect of membership or has acquired such interest in the society, as may be specified in the bye-laws.
- Restrictions on holding of shares* 26. In any society, no member other than the Government or any other society shall hold or have claim to more than such portion of the total share capital of the society which exceed one-fifth thereof or Rs. 5,000/- whichever is less.  
Provided that the Government may, by notification in the Official Gazette, specify in respect of any class of societies a higher maximum than one-fifth of the share capital or a higher amount than Rs. 5,000/- as the case may be.
- Restriction on transfer of shares or interest* 27. (1) The transfer of a share or interest of a member in the capital of a society shall be subject to the restrictions specified in section 26.  
(2) No transfer by a member of his share or interest in a society shall be valid unless -  
(a) the member has held such share or interest for not less than one year;  
(b) the transfer is made to the society or to a member of the society; and  
(c) the transfer is approved by the Committee of the society.
- Transfer of interest on death of a member* 28. (1) On the death of a member the society shall transfer the share or interest of the deceased member to the person or persons nominated in accordance with the rules or, if no person has been so nominated, to such person as may appear to the Committee to be the heir or legal representative of the deceased member:  
Provided that such nominee, heir or legal representative, as the case may be, is admitted as the member of the society;  
Provided further that nothing in this sub-section shall prevent a minor or a person of unsound mind from acquiring by inheritance the share or interest of a deceased member in a society.  
(2) Notwithstanding anything contained in sub-section (1) any such nominee, heir, or a legal representative, as the case may be require the society to pay to him the value of the share or interest of the deceased member ascertained in accordance with the Rules.  
(3) The society may pay all other moneys due to the deceased member from the society to such nominee, heir or legal representative, as the case may be.  
(4) All transfers and payments made by a society in accordance with the provisions of this section shall be valid and effectual against any demand made upon the society by any other person.
- Liability of past members and estate of deceased member* 29. (1) Subject to the provisions of sub-section (2), the liability of a past member or of the estate of the deceased member of a society for the debts of the society as they existed shall continue for a period of two years -  
(a) in the case of a past member, from the date on which he ceased to be a member; and  
(b) in the case of a deceased member from the date of his death.  
(2) Where a society is ordered to be wound up under section 75, the liability of a past member or of the estate of a deceased member who ceased to be a member or died within two years immediately preceding the date of the order of winding up, shall continue until the entire liquidation proceedings are completed but such liability shall extend only to the debts of a society as they existed on the date of his ceasing to be a member or death, as the case may be.

## Chapter IV

## Management of Societies

*Final authority of a society*

30. (1) The final authority of every society shall vest in the general body of members in general meeting:

Provided that in such circumstances as may be prescribed the final authority may vest in the delegates of such members elected in the prescribed manner and assembled in general meeting.

(2) The general meeting shall be summoned and shall exercise its authority in such manner as may be prescribed.

*Management of Society*

31. (1) The management of every society shall vest in a committee constituted in accordance with the bye-laws.

(2) No person shall be eligible to be elected as a member of a committee unless he is a member of the society.

(3) No member of a society shall be eligible for being elected as a member of the committee of that society or of any other society to which such society is affiliated, if such member -

(a) has been adjudged by a competent court to be insolvent or of unsound mind;

(b) is concerned or participates in the profits of any contract with the society;

(c) has been punished with imprisonment for an offence involving moral turpitude;

(d) has been in default in payment of his dues to the society for a continuous period of three months from the due date or any extended period thereof.

(e) carries the business of the same kind carried on by the society.

(4) A member of the committee of a society shall cease to be a member of such committee if he becomes subject to any of the disqualifications mentioned in sub-section (3) and the vacancy so arising in the committee shall be filled in accordance with the bye-laws.

*Annual general meeting*

32. (1) The general meeting of every society shall be held within a period of six months after the date fixed for making-up its accounts for the co-operative year under the rules for the time being in force, for the purpose of -

(a) approving the programme of the activities of the society prepared by the committee for the ensuing co-operative year;

(b) electing the members of the committee other than members nominated under section 38;

(c) considering the audit report and the annual report;

(d) disposing of the net profits; and

(e) considering any other matter which may be brought forward in accordance with the bye-laws:

Provided that the Registrar may, by general or special order, extend the period for holding such meeting for a further period not exceeding three months:

Provided further that, if in the opinion of the Registrar no such extension is necessary or such meeting is not called by the society within the extended period, if any, granted by him, the Registrar or any person authorised by him may call such meeting and exercise all powers and functions of an officer of the society authorised to convene such meeting and that meeting shall be deemed to be a general meeting duly called by the society. The Registrar may order that the expenditure incurred in calling such a meeting shall be paid out of the funds of the society or by such person or persons who, in the opinion of the Registrar, were responsible for the refusal or failure to convene the general meeting.

(2) At every annual general meeting of a society, the committee shall lay before the society a statement showing the details of the loans, if any, given to any of the members of the committee during the preceding year.

*Special general meeting*

33. (1) The committee of a society may, at any time, call a special general meeting of the society and also shall call such meeting within one month after the receipt of a requisition in writing from the Registrar or from such number of members or a proportion of the total number of members, as may be provided in the bye-laws.

(2) If a special general meeting of a society is not called in accordance with the requisition referred to in sub-section (1), the Registrar or any person authorised by him in this behalf shall call such meeting and exercise all powers and functions of an officer of the society who is authorised to convene such special general meeting and that meeting shall be deemed to be a meeting called by the committee, and the Registrar may order that the expenditure incurred in



*Election of members of committees*

calling such a meeting shall be paid out of the funds of the society or by any such person or persons who, in the opinion of the Registrar, were responsible for the refusal or failure to convene the special general meeting.

34. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, elections of the members of the committees of such societies or class of societies as may be notified by the state government in the official gazette shall be vested in such returning officers not below the rank of gazetted officers as may be appointed by the Government in this behalf.

*Term of office of a Committee*

(2) The vote at such elections shall be by secret ballot.

35. The term of office of the elected members of the committee shall be such, not exceeding three co-operative years including the co-operative year of their election, as may be specified in the bye-laws of the society:

Provided that the elected members shall continue to hold office till their successors are elected or nominated under the provisions of the Act or the rules or bye-laws.

*Disqualifications to be an officer of a society*

36. Notwithstanding anything contained in this Act, a person shall be disqualified for election as, or for being, the president, vice-president, chairman, vice-chairman, Secretary, Joint Secretary or treasurer of a committee, -

(a) if he has held any such office on that committee during the preceding two consecutive terms, whether full or part;

(b) if he holds any such office on a committee of another society of the same type;

(c) if he holds any such office on the committees of three or more societies of different types including the State Co-ordinative Bank or a federal society:

Provided that nothing contained in this sub-section shall be deemed to disqualify any such person for election as, or for being, a delegate of a society or a member of another committee.

*Explanation 1:* Where any person holding any office as aforesaid at the commencement of this Act is again elected to any such office after such commencement, he shall, for the purpose of this sub-section, be deemed to have held that office for one term before such election.

*Explanation 2:* A person who has ceased to hold any such office as aforesaid continuously for one full term shall again be qualified for election to any of those offices.

*Representation of weaker section on the committee*

37. On the committee of a primary agricultural credit society or other societies as may be prescribed, not less than one-third of total seats shall be reserved for economically weaker sections of the members who, as land owners or tenants or as both, do not hold more than the prescribed area of agricultural land or who fulfil the prescribed conditions, and if no such persons are elected, the committee shall co-opt the required number of members from amongst the persons entitled to such representation.

*Nomination of members to the committee*

38. (1) Notwithstanding anything contained in this Act, but subject to the provisions of section 36, where the Government has subscribed to the share capital of a society or has assisted directly or indirectly, in the formation or augmentation of the share capital of a society, or has guaranteed the repayment of principal and payment of interest on loans and advances to a society, the government or any other person authorised by it in this behalf shall have the right to nominate members on the committee in the manner prescribed below viz.

(i) where the Government shareholding is not less than one third and not more than two-thirds of the equity the number of government nominees shall not exceed a third of the total number of members of the committee or three, whichever is less.

(ii) where the Government holds more than two-thirds of the total equity, the number of Government nominees shall not exceed one-half of the total number of members of the committee or five whichever is less.

Provided that in the case of societies registered after the commencement of this Act, the Government may have the power to nominate the initial committee for a period of 3 years or such extended period as may be decided by the Government.

(2) A person nominated under sub-section (1) shall hold office during the pleasure of the Government.

*Supersession of committee*

39. (1) If, in the opinion of the Registrar, the committee of any society persistently makes default or is negligent in the performance of the duties imposed

on it by this Act or the rules or the bye-laws, or commits any act which is prejudicial to the interest of the society, or its members, or the co-operative movement in the state, or wilfully disobeys or fails to comply with any lawful order or directions issued under this Act or the rules, the Registrar may, after giving the committee an opportunity to state its objections, if any, by order in writing, remove the committee; and

(a) order fresh election of the committee, or

(b) appoint one or more administrators who need not be members of the society, to manage the affairs of the society for a period not exceeding one year specified in the order, which period may, at the discretion of the Registrar be extended from time to time, so, however, that the aggregate period does not exceed three years.

(2) The Registrar may fix any remuneration for the administrator, as he may think fit. Such remuneration shall be paid out of the funds of the society.

(3) The administrator shall, subject to the control of the Registrar and to such instructions as he may from time to time issue, exercise all or any of the powers of the committee or of any officer of the society and take all such actions as may be required in the interest of the society.

(4) The administrator or administrators shall, before the expiry of his or their term of office, take all steps to constitute a new committee in accordance with the bye-laws of the society.

(5) Before taking any action under sub-section (1) in respect of a society, the Registrar shall consult the State Co-operative Bank to which it is indebted.

*Securing possession of records etc.*

40. (1)(a) If the records, registers, documents or the books of accounts of a society are likely to be tampered with or destroyed and the funds, securities and other properties of a society are likely to be misappropriated or misapplied; or

(b) If the committee of a society is reconstituted at a general meeting of the society or the committee of a society is removed by the Registrar under section 39 or if the society is ordered to be wound up under section 75 and the outgoing members of the committee refused to hand over charge of the records and properties of the society to those having or entitled to receive such charge the Registrar or any other person authorised by him in this behalf may apply to the magistrate, within whose jurisdiction the society functions, for securing the records and property of the society.

(2) On receipt of an application under sub-section (1), the magistrate may, by a warrant, authorise any police officer not below the rank of sub-inspector to enter and search any place where the records and the property are kept or are believed to be kept and to seize such records and properties; and the records and properties so seized shall be handed over to the new committee or administrators of the society or the liquidator, as the case may be.

*Acts of societies not to be invalidated by certain defects*

41. No act of a society or of any committee or of any officer shall be deemed to be invalid by reason only of the existence of any defect in procedure followed or in the constitution of the society or of the committee or in the appointment or election of an officer or on the ground that such officer was disqualified for his appointment.

## Chapter V

### Rights and privileges of societies

*First charge of a society on certain moveable assets of member for the amount due by him*

42. (1) Notwithstanding anything contained in any other law for the time being in force but subject to any claim of the Government in respect of land revenue or any sum recoverable as land revenue or as public demand, any claim, any debt or other amount due to a society by any member including a past or deceased member shall be a first charge upon the crops or other agricultural produce, cattle, fodder for cattle, agricultural or industrial implements or machinery, raw materials for manufacture and any finished products manufactured from such raw materials owned by or belonging to such member, past member or forming part of the estate of the deceased member as the case may be.

(2) Such charge shall be available even as against any amount recoverable by the Government as if it were an arrear of land revenue subsequent to the incurring of the debt or the liability for the other amount due to the society referred to in sub-section (1).

(3) No person shall transfer any property which is subject to such charge except with the previous permission in writing of the society which holds the charge and any transfer, without such permission shall, notwithstanding anything contained in any law for the time being in force, be void.

(4) The charge under this section shall not be available against the following articles of such member:

(a) the necessary wearing apparel, cooking vessels, beds and bedding and such personal ornaments of a woman as in accordance with religious usage cannot be parted with by her;

(b) ploughs, implements of husbandry, one pair of ploughing cattle, such manure and seed grains stocked by him, as may be necessary for the due cultivation of his lands in the ensuing year.

*Charge on the immovable property of a member for the loans borrowed*

43. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force, but subject to any claim of the Government in respect of land revenue, whether prior in time or subsequent, any member of a society, owning any land or having interest in any land or other immovable property as a tenant, making an application for financial assistance from the society shall make a declaration in the form prescribed creating a charge in favour of the society on such land or interest or such portion thereof as may be specified in the declaration, as security for the payment of the loan to be granted to him on the application and for all future loans, if any, that may be granted to him by the society from time to time subject to such maximum as may be determined by the society together with the interest on such amount of the loans.

(2) Such declaration may be varied or cancelled at any time by the member with the consent of the society in whose favour it is made.

(3) Subject to the provisions of sub-section (1) and to the claim of any person in whose favour a charge has been created before the date of registration of the declaration made under sub-section (1), no land in respect of which such declaration has been made or any part thereof or any interest therein shall be sold or otherwise transferred until the entire amount of the loan or advance taken by the member from the society together with interest thereon is paid to the society; and any transaction in contravention of this sub-section shall be void.

Provided that if a part of the amount borrowed by a member is paid, the society may on application from the member release from the charge such part of the land or interest therein as it may deem proper, having due regard to the security or the balance of the amount remaining outstanding from the member.

*Priority of mortgage over certain claims*

44. A mortgage executed in favour of a primary agricultural credit society or the State Co-operative Bank shall have priority over any claim of the Government arising from a loan granted subsequent to the execution of the mortgage.

*Registration of charge and mortgage in favour of societies*

45. (1) Notwithstanding anything contained in the Indian Registration Act, 1908, a declaration made under sub-section (1) of section 43 or a variation or cancellation made under sub-section (2) of section 43 or a mortgage executed by a member in favour of a primary agricultural credit society or State Co-operative Bank, as the case may be, in respect of financial assistance given by that society shall be deemed to have been duly registered in accordance with the provisions of that Act with effect from the date of such declaration, variation, cancellation or mortgage, as the case may be, provided that the society sends to the Sub-Registrar within the local limits of whose jurisdiction the whole or any part of the property charged or mortgaged is situated within thirty days from the date of such declaration, variation, cancellation or mortgage, as the case may be, by registered post acknowledgement due, a copy of the document making such declaration, variation, cancellation or mortgage duly certified to be a true copy by an officer of the society authorised to sign on its behalf.

(2) The Sub-Registrar receiving the declaration in respect of a charge or variation or a mortgage referred to in sub-section (1) shall, as immediately as practicable on receipt thereof, record in a register to be maintained in this behalf, the fact of the receipt of such declaration, variation or mortgage for registration.

*Noting of charge or mortgage created in the Record of Rights*

46. Whenever a charge or a mortgage of land or interest therein is created in favour of a society or is discharged by a society the society shall give intimation to such revenue official as may be designated in this behalf by the Government, of the particulars of the charge or mortgage in its favour or discharge thereof. The revenue official shall make a note of the particulars of charge or mortgage or discharge thereof in the Record of Rights.

Provided that the absence of an entry in the record of rights on the basis of such declaration or a defective entry passed in the record in respect thereof shall not affect the validity of the charge or mortgage or discharge thereof.

*Registration to constitute notice*

46A. The Registration in the records of the Sub-Registrar or the recording in the record of rights of a charge or variation made under section 43 shall constitute sufficient notice of such change or variation to any person dealing with the property subject thereto.

*Restrictions on disposal of property charged or mortgaged to a society*

47. (1) Notwithstanding anything contained in any law for the time being in force, a member who has availed himself of financial assistance from a society by creating a charge or mortgage on land or interest therein, shall not, so long as the financial assistance continues to be outstanding, lease, transfer or create any encumbrance on such land or interest therein without prior permission in writing of the society in whose favour such charge or mortgage is created.

(2) Any lease or transfer or encumbrance created in contravention of this section shall be void.

(3) Nothing contained in any law relating to ceiling on agricultural holdings shall apply to the acquisition of land by a society charged or mortgaged to it as security by for loan.

*Charge and set off of shares or interest of a member*

48. A society shall have a charge upon the share or contribution or interest in the capital and on the deposits of a member or past member, or deceased member and upon any dividend, or profits payable to a member or past member or the estate of a deceased member, in respect of any debt or outstanding demand owing to the society, and may set off any sum credited or payable to a member or past member or the estate of deceased member in or towards payment of any such debt.

*Shares, interest, etc. not liable to attachment*

49. Subject to the provisions of section 48 the share or contribution or interest of a member to past member or deceased member in the capital of a society shall not be liable to attachment or sale under any decree or order of any court in respect of any debt or liability incurred by such member and any receiver appointed under any law relating to insolvency for the time being in force shall not be entitled to or have any claim on such share or contribution or interest.

*Register of members*

50. Every society shall keep and maintain a register or list of members or shares of the society which shall be prima facie evidence of the following particulars entered therein:-

(a) the date on which any person entered in such register or list became a member;

(b) the date on which any such person ceased to be a member.

*Admissibility of copy of entry as evidence*

51. (1) A copy of any entry in the books of a society which are maintained in the ordinary course of business shall, if certified in the manner as may be prescribed, be received in any suit or legal proceedings as prima facie evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case to the same extent as the original entry.

(2) No officer of a society and no officer in whose office the books of a society are deposited after liquidation shall, in any legal proceedings to which the society or the liquidator is not a party, be compelled to produce any of the society's books or documents the contents of which can be proved under this section, or to appear as a witness to prove the matters, transactions and accounts therein recorded, except under order of the court, tribunal or the arbitrator made for special cause.

*Exemption from compulsory registration of instruments*

52. No provision relating to registration of documents contained in any law for the time being in force shall apply to -

(1) any instrument relating to shares in a society notwithstanding that the assets of the society consist in whole or in part of immovable property; or

(2) any debenture or bond issued by any such society and not creating, declaring assigning, limiting or extinguishing any right, title or interest to or in immovable property, except in so far as it entitles the holder thereof to the security afforded by a registered instrument whereby the society has mortgage conveyed, or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures or bonds; or

(3) any endorsement upon or transfer of any debenture or bond issued by any such society.

*Exemption from certain taxes, fees and duties*

53. (1) The Government may, by notification in the Official Gazette, remit in respect of any class of societies -

(a) the stamp duty chargeable under any law for the time being in force in respect of any instrument executed by or on behalf of a society or by an officer or member thereof and relating to the business of such society or any class of such instruments or in respect of any award or order made under this Act, in cases, where, but for such remission the society, officer or member as the case may be, would be liable to pay such stamp duty;